

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:

Brian KOHNE

Serial No.: 10/090,206

Filed: March 1, 2002

For: PERPENDICULAR VIEW THREE
DIMENSIONAL ELECTRONIC
PROGRAMMING GUIDE

Atty. Docket No.: 007287.00007

Group Art Unit: 2424

Examiner: Hossain, Farzana E.

Confirmation No.: 4670

APPEAL BRIEF

U.S. Patent and Trademark Office
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Sir:

This is an Appeal Brief filed in support of Appellants' April 13, 2009, Notice of Appeal. Appeal is taken from the Final Office Action mailed January 12, 2009.

General Authorization of Payment of Fees

If any fees are due in this application, whether or not associated with this filing, please charge any fees due to Deposit Account No. 19-0733. Any necessary extensions of time are hereby requested.

REAL PARTY IN INTEREST

37 C.F.R. § 41.37(c)(1)(i)

The owner of this application, and the real party in interest, is JLB Ventures LLC of Washington, D.C.

RELATED APPEALS AND INTERFERENCES

37 C.F.R. § 41.37(c)(1)(ii)

There are no related appeals or interferences.

STATUS OF CLAIMS

37 C.F.R. § 41.37(c)(1)(iii)

Claims 1-24 are pending and rejected. Appellants hereby appeal the rejection of claims 1-24.

STATUS OF AMENDMENTS

37 C.F.R. § 41.37(c)(1)(iv)

An “Amendment And Request For Reconsideration” was filed on January 12, 2009. Claim amendments included therein addressed rejections under 35 U.S.C. § 101. As indicated in the Advisory Action mailed March 23, 2009, the amendments were entered for purposes of (this) appeal. The claim listing provided herein reflects the amendments made.

SUMMARY OF CLAIMED SUBJECT MATTER

37 C.F.R. § 41.37(c)(1)(v)

In making reference herein to various embodiments in the specification text and/or drawings to explain the claimed invention, Appellants do not intend to limit the claims to those embodiments; all references to the filed specification and drawings are illustrative unless otherwise explicitly stated. Moreover, written description support may be found in the filed specification when read as a whole, in addition to the specific passages cited.

Independent claim 1 is directed to a method comprising receiving input identifying a first broadcasted program. *Specification*, p.6, lines 4-5; Fig. 1 (110). The method further comprises selecting content, based on the input, to be displayed in a background area of an interactive programming guide. *Id.*, p. 6, lines 8-12. The method further comprises determining that the first broadcasted program is selected for at least a time greater than a predetermined threshold, and responsive to determining that the first broadcasted program is selected for at least a time greater than the predetermined threshold, displaying the selected content in the background area of the interactive programming guide, wherein the selected content is overlapped by information related to the first broadcasted program. *Id.*, p. 3, lines 3-11; p. 9, lines 14-19.

Independent claim 8 is directed to a storage computer-readable medium storing instructions that, when executed by a processor, cause the processor to perform a method comprising receiving input identifying a first broadcasted program. *Id.*, p.6, lines 4-5; Fig. 1 (110); p. 17, lines 20-21; p.18, lines 4-17. The performed method further comprises selecting content, based on the input, to be displayed in a background area of an interactive programming guide. *Id.*, p. 6, lines 8-12. The performed method further comprises determining that the first broadcasted program is selected for at least a time greater than a predetermined threshold, and responsive to determining that the first broadcasted program is selected for at least a time greater than the predetermined threshold, displaying the selected content in the background area of the interactive programming guide, wherein the selected content is overlapped by information related to the first broadcasted program. *Id.*, p. 3, lines 3-11; p. 9, lines 14-19.

Independent claim 15 is directed to a system comprising a first unit to receive input identifying a first broadcasted program. *Id.*, p. 15, lines 13-21; Fig. 6 (610, 630). The system further comprises a second unit to select content, based on the input, to be displayed in a background area of an interactive programming guide. *Id.* The system further comprises a third unit configured to determine that the first broadcasted program is selected for at least a time greater than a predetermined threshold. *Id.*, p. 9, lines 14-19; p. 17, lines 7-8. The system further comprises a fourth unit configured to display the selected content in the background area of the interactive programming guide responsive to determining that the first broadcasted program is selected for at least a time greater than the predetermined threshold, wherein the selected content is overlapped by information related to the first broadcasted program. *Id.*

Independent claim 23 is directed to a method comprising receiving input identifying a first broadcasted program. *Id.*, p.6, lines 4-5; Fig. 1 (110). The method further comprises determining whether a background content selection feature is enabled. *Id.*, p.10, lines 3-5. The method further comprises, in response to determining that the background selection feature is enabled, selecting content, based on the identified first broadcasted program, to be displayed in a background area of an interactive programming guide. *Id.*, p. 6, lines 8-12; p.10, lines 3-5. The method further comprises determining that the first broadcasted program is selected for at least a time greater than a predetermined threshold, and responsive to determining that the first

broadcasted program is selected for at least a time greater than the predetermined threshold, displaying the selected content in the background area of the interactive programming guide, wherein the selected content is overlapped by information related to the first broadcasted program. *Id.*, p. 3, lines 3-11; p. 9, lines 14-19.

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

37 C.F.R. § 41.37(c)(1)(vi)

- Claims 1-24 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. pub. no. 2006/0010469 to Reynolds et al. (“Reynolds”), in view of U.S. pat. no. 5,812,123 to Rowe et al. (“Rowe”).

ARGUMENT

37 C.F.R. § 41.37(c)(1)(vii)

A. Rejection of Claims 1-7 and 22

1. Independent Claim 1

Independent claim 1 recites:

“... determining that the first broadcasted program is selected for at least a time greater than a predetermined threshold; and responsive to determining that the first broadcasted program is selected for at least a time greater than the predetermined threshold, displaying the selected content in the background area of the interactive programming guide, wherein the selected content is overlapped by information related to the first broadcasted program.”

At pages 6-7 of the Amendment And Request For Reconsideration filed January 12, 2009, discussion was provided regarding the asserted combination of Reynolds and Rowe to allegedly arrive at the above-noted features recited in claim 1. Appellants incorporate the substance of that discussion herein by way of reference. In short, the Office has continued to disregard passages in Reynolds that teach away from the above-noted features recited in claim 1. More specifically, Reynolds at paragraphs [0003]-[0004] describes the frustration a user experiences with respect to passive guides due to being forced to wait until a list of program

listings scrolls to display listings for a channel or time that a user is interested in, and that users of passive guides have no way of controlling how quickly or how often listings appear. Accordingly, one skilled in the art, starting from Reynolds, would not have had an apparent reason to modify Reynolds to include features related to determining that a first broadcasted program is selected for at least a time greater than a predetermined threshold, and responsive to determining that the first broadcasted program is selected for at least a time greater than the predetermined threshold, displaying a selected content in a background area of an interactive programming guide, wherein the selected content is overlapped by information related to the first broadcasted program because such features run counter to the intended purpose of Reynolds.

The Advisory Action at page 2 contends that the applicant is focusing on two paragraphs ([0003]-[0004]) related to limitations that Reynolds is overcoming. Appellants respectfully submit that the Office is impermissibly treating Reynolds as if those two paragraphs did not exist when those two paragraphs clearly define the intended purposes and goals of Reynolds' invention. Appellants remind the Office that a reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. MPEP § 2141.02 (VI.) (emphasis in original). When considering Reynolds in its entirety, i.e., as a whole, one of skill in the art would not have modified Reynolds in the manner suggested by the Office.

Furthermore, the Office's disregard for paragraphs [0003]-[0004] of Reynolds improperly conflates the modes of analysis associated with a section 102 and a section 103 rejection. More specifically, under a section 102 rejection, arguments that the alleged anticipatory prior art is 'nonanalogous art' or 'teaches away from the invention' or is not recognized as solving the problem solved by the claimed invention, are not 'germane' to a rejection under section 102. MPEP § 2131.05. Conversely, a section 103 rejection requires a modification to have been obvious to one of ordinary skill in the art at the time the invention was made. MPEP § 706.02 (V.) (contrasting section 102 and 103 analyses). Under a section 103 rejection, a modification cannot be made to a reference that frustrates the reference's intended purpose. MPEP § 2143.01 (V.). The Office has indicated that claim 1 is rejected under section 103, yet the Office's rationale in rejecting claim 1 (improperly) uses a section 102 mode of analysis.

For at least the foregoing reasons, the Office's proposed combination of Reynolds and Rowe is improper. As neither reference, taken in the singular, discloses all of the features recited in claim 1, claim 1 is allowable.

Moreover, with respect to the above-noted features as recited in claim 1, claim 1 recites displaying the selected content in the background area of the interactive programming guide, wherein the selected content is overlapped by information related to the first broadcasted program. At page 8 of the paper entitled "Request For Reconsideration," dated March 20, 2008, discussion was provided regarding the failure of the references to disclose such features. That discussion is incorporated herein by way of reference. In short, Reynolds at paragraphs [0089] and [0090] merely describes that a hybrid guide may be generated by an interactive guide using an overly technique to overlay program listings display area, text display area, graphic display areas, video display areas, or interactive feature areas *onto a passive guide display screen*. Even assuming, without conceding, that the passive guide constitutes a background area, nowhere does Reynolds teach or suggest displaying content selected in the interactive guide in the passive guide display screen, wherein the selected content is overlapped by information related to a first broadcasted program. Indeed, the passive guide display corresponds to a specific and passive channel in a broadcast lineup. *See, e.g.*, Reynolds at paragraph [0088]. Thus, the passive guide display would not change based on what is selected in the interactive guide. Rowe is similarly deficient and thus does not cure the above noted deficiencies of Reynolds. Accordingly, claim 1 is allowable for at least this additional reason (notwithstanding whether a combination of Reynolds and Rowe is proper).

2. Dependent Claims 2-7 and 22

Claims 2-7 and 22 depend from claim 1 and are allowable for at least the same reasons as claim 1.

B. Rejection of Claims 8-14

1. Independent Claim 8

Independent claim 8 recites:

“ . . . determining that the first broadcasted program is selected for at least a time greater than a predetermined threshold; and responsive to determining that the first broadcasted program is selected for at least a time greater than the predetermined threshold, displaying the selected content in the background area of the interactive programming guide, wherein the selected content is overlapped by information related to the first broadcasted program.”

The above-noted features are allowable over the applied references for at least reasons substantially similar to those described above with respect to claim 1.

2. Dependent Claims 9-14

Claims 9-14 depend from claim 8 and are allowable for at least the same reasons as claim 8.

C. Rejection of Claims 15-21

1. Independent Claim 15

Independent claim 15 recites:

“ . . . a third unit configured to determine that the first broadcasted program is selected for at least a time greater than a predetermined threshold; and a fourth unit configured to display the selected content in the background area of the interactive programming guide responsive to determining that the first broadcasted program is selected for at least a time greater than the predetermined threshold, wherein the selected content is overlapped by information related to the first broadcasted program.”

The above-noted features are allowable over the applied references for at least reasons substantially similar to those described above with respect to claim 1.

2. Dependent Claims 16-21

Claims 16-21 depend from claim 15 and are allowable for at least the same reasons as claim 15.

D. Rejection of Claims 23 and 24

1. Independent Claim 23

Independent claim 23 recites:

“... determining that the first broadcasted program is selected for at least a time greater than a predetermined threshold; and responsive to determining that the first broadcasted program is selected for at least a time greater than the predetermined threshold, displaying the selected content in the background area of the interactive programming guide, wherein the selected content is overlapped by information related to the first broadcasted program.”

The above-noted features are allowable over the applied references for at least reasons substantially similar to those described above with respect to claim 1.

2. Dependent Claim 24

Claim 24 depends from claim 23 and is allowable for at least the same reasons as claim 23.

CONCLUSION

For all of the foregoing reasons, Appellants respectfully submit that the final rejection of claims 1-24 is improper and should be reversed.

Respectfully submitted,
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CLAIMS APPENDIX
37 C.F.R. § 41.37(c)(1)(viii)

Claims involved in the appeal:

1 (Previously Presented): A method comprising:

receiving input identifying a first broadcasted program; and
selecting content, based on the input, to be displayed in a background area of an interactive programming guide; and

determining that the first broadcasted program is selected for at least a time greater than a predetermined threshold; and

responsive to determining that the first broadcasted program is selected for at least a time greater than the predetermined threshold, displaying the selected content in the background area of the interactive programming guide, wherein the selected content is overlapped by information related to the first broadcasted program.

2 (Original): The method of claim 1, wherein the first broadcasted program is selected from a set of broadcasted programs displayed in the interactive programming guide.

3 (Original): The method of claim 1, wherein the first broadcasted program is selected by a user of the interactive programming guide.

4 (Original): The method of claim 1, wherein the content includes an image from the first broadcasted program.

5 (Original): The method of claim 1, wherein the content includes information about a subject associated with the first broadcasted program.

6 (Original): The method of claim 1, wherein the content is selected based on a category of the first broadcasted program.

7 (Original): The method of claim 6, wherein the content includes information about a subject associated with the category.

8 (Previously Presented): A storage computer-readable medium storing instructions that, when executed by a processor, cause the processor to perform a method comprising:

- receiving input identifying a first broadcasted program; and
- selecting content, based on the input, to be displayed in a background area of an interactive programming guide; and
- determining that the first broadcasted program is selected for at least a time greater than a predetermined threshold; and
- responsive to determining that the first broadcasted program is selected for at least a time greater than the predetermined threshold, displaying the selected content in the background area of the interactive programming guide, wherein the selected content is overlapped by information related to the first broadcasted program.

9 (Previously Presented): The storage computer-readable medium of claim 8, wherein the first broadcasted program is selected from a set of broadcasted programs displayed in the interactive programming guide.

10 (Previously Presented): The storage computer-readable medium of claim 8, wherein the first broadcasted program is selected by a user of the interactive programming guide.

11 (Previously Presented): The storage computer-readable medium of claim 8, wherein the content includes an image from the first broadcasted program.

12 (Previously Presented): The storage computer-readable medium of claim 8, wherein the content includes information about a subject associated with the first broadcasted program.

13 (Previously Presented): The storage computer-readable medium of claim 8, wherein the content is selected based on a category of the first broadcasted program.

14 (Previously Presented): The storage computer-readable medium of claim 13, wherein the content includes information about a subject associated with the category.

15 (Previously Presented): A system comprising:

- a first unit to receive input identifying a first broadcasted program; and
- a second unit to select content, based on the input, to be displayed in a background area of an interactive programming guide; and
- a third unit configured to determine that the first broadcasted program is selected for at least a time greater than a predetermined threshold; and
- a fourth unit configured to display the selected content in the background area of the interactive programming guide responsive to determining that the first broadcasted program is selected for at least a time greater than the predetermined threshold, wherein the selected content is overlapped by information related to the first broadcasted program.

16 (Original): The system of claim 15, wherein the first broadcasted program is selected from a set of broadcasted programs displayed in the interactive programming guide.

17 (Original): The system of claim 15, wherein the first broadcasted program is selected by a user of the interactive programming guide.

18 (Original): The system of claim 15, wherein the content includes an image from the first broadcasted program.

19 (Original): The system of claim 15, wherein the content includes information about a subject associated with the first broadcasted program.

20 (Original): The system of claim 15, wherein the content is selected based on a category of the first broadcasted program.

21 (Previously Presented): The system of claim 15, wherein the selected content is user-generated.

22 (Previously Presented): The method of claim 1, wherein the first broadcasted program corresponds to a sporting event and wherein the selected content includes one or more sporting event scores for the same sport as the sporting event.

23 (Previously Presented): A method comprising:

- receiving input identifying a first broadcasted program;

- determining whether a background content selection feature is enabled;

- in response to determining that the background selection feature is enabled, selecting content, based on the identified first broadcasted program, to be displayed in a background area of an interactive programming guide;

- determining that the first broadcasted program is selected for at least a time greater than a predetermined threshold; and

- responsive to determining that the first broadcasted program is selected for at least a time greater than the predetermined threshold, displaying the selected content in the background area of the interactive programming guide, wherein the selected content is overlapped by information related to the first broadcasted program.

24 (Previously Presented): The method of claim 23, wherein determining whether a background content selection feature is enabled further comprises determining whether content is available for selection.

EVIDENCE APPENDIX
37 C.F.R. § 41.37(c)(1)(ix)

NONE.

RELATED PROCEEDINGS APPENDIX

37 C.F.R. § 41.37(c)(1)(x)

NONE.